

Indiana Commission for Continuing Legal Education

40-Hour Basic Civil Mediation Training Course Training Standards

The Indiana Commission for Continuing Legal Education is required under the Indiana Alternative Dispute Resolution Rules to certify training programs for mediators. The Commission has adopted the following standards to ensure that training programs are high quality and are uniformly treated.

I. GENERAL.

The primary trainer shall deliver all the mediation skills portions of the training.

Training assistants may be used to critique role plays, to moderate small group discussions, and to participate in role play simulations.

Experts shall be used for lectures on "Communications Skills and Knowledge" and "Interpersonal Dynamics". Additional experts may be used to teach specialized areas, once they are approved by the Commission for this purpose.

Participants must attend each session in its entirety, or they will not receive a training certificate or be listed on the Indiana Commission for Continuing Legal Education Registry of Approved Civil Court Mediators.

A basic civil training course must last a minimum of 40 hours.

Basic civil training courses are awarded 24 hours of continuing legal education credit and 6 hours of professional responsibility credit.

An Indiana attorney who teaches the Indiana law component or ethics component shall receive CLE or ethics credit at a 4:1 ratio. Assistant trainers will receive CLE credit at a 2:1 ratio. Primary trainers may receive CLE credit at a 2:1 ratio or 24 hours, whichever is less.

Trainers must submit a list of all attendees to the Commission within thirty days of the final day of training.

II. TRAINER AND EXPERT QUALIFICATIONS.

A. Primary Trainer.

1. The primary trainer must be a mediator in good standing and an attorney in good standing in some state.

a. The primary trainer shall not have been disqualified from mediation or the practice of law in any state.

b. If the primary trainer is not an attorney in Indiana, an Indiana attorney must be approved by the Commission for the purpose of teaching Indiana Alternative Dispute Resolution Rules and Indiana case law on mediation.

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2. The primary trainer must have taken a basic mediation course recognized by a state as approved for training court-sanctioned mediation.
3. The primary trainer must have mediated 50 court sanctioned cases, 25 within the last year.

B. Assistant Trainers.

1. Assistant trainers must be mediators in good standing and attorneys in good standing in some state. Assistant trainers shall not have been disqualified from mediation or from the practice of law in any state.
2. Assistant trainers must have taken a basic mediation course recognized by a state as approved for training court-sanctioned mediation.
3. Assistant trainers must have mediated 25 court-sanctioned cases, 10 within the last year.

C. Experts.

1. An expert shall be used to teach "Communications Skills and Knowledge" and "Interpersonal Dynamics".
 - a. At a minimum, the Commission considers the following to determine whether an individual is an expert qualified to lecture on these issues:
 1. Classes taught in the behavioral, social science or communications fields;
 2. Degree programs (classes taken in pursuit of a degree in the behavioral, social science or communications fields);
 3. Experience in the behavioral, social science or communications fields (i.e. as a therapist or practitioner), and
 4. Research and writing in the behavioral, social science or communications fields.
2. The Commission must also approve the use of any other experts.
 - a. At a minimum, the Commission considers the following to determine whether an individual is an expert qualified to lecture on specialized topics:
 1. Classes taught by the individual dealing with the topic;
 2. Degree programs;
 3. Experience in the field in question; and

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4. Research and writing in the field in question.

III. TRAINING METHODOLOGY.

A variety of teaching techniques shall be employed including: lecture, group discussion, written exercises, mediation simulations, role plays and readings. At a minimum, every participant must take part in at least one complete role play as the mediator and one complete role play as the party. A trainee must perform each of these role plays under the observation of a primary trainer or training assistant.

The primary trainer or training assistant may view no more than two role plays simultaneously.

IV. CURRICULUM, IN GENERAL.

Trainers must submit: a completed "Civil Mediation Training Program Application for Supreme Court Certification;" program agenda (including time breakdowns for each topic); bibliography of recommended reading; summary of materials to be used in the training; speaker, expert and trainer biographies; completed "Mediation Trainer Application" forms; and completed "Mediation Expert Application" forms.

Required reading for the course shall include the Indiana Alternative Dispute Resolution Rules. Readings do not count towards the forty hours of training required. They should be assigned and completed prior to the training or at times when the training program is not being conducted. Trainers are encouraged to ensure the readings are completed.

V. CURRICULUM, MINIMUM REQUIRED SUBJECTS

A. The following topics must be addressed for the minimum time specified for each subject. Topics 1 and 2 must be taught by an Indiana attorney in good standing. The green "Mediation Expert Application for Supreme Court Certification" completed by this attorney must accompany the completed application for course certification.

1. Indiana Rule on ADR - (minimum 1 hour)
ADR Rule 1-6 and case law update.

Note: case law update should deal with the existing and emerging body of mediation law in these areas, not only in Indiana.

2. Indiana Rule 7 and case law update: (minimum 2 hours)

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Note: case law update should deal with the existing and emerging body of mediation law in these areas, not only in Indiana.

Topics at a minimum must include:

- a. Conflicts of interest
- b. Confidentiality and exclusions
- c. Facilitating fair, reasonable & voluntary agreements
- d. Promotion of mutual respect of the participants in the mediation session and including power balancing and control and decorum
- e. Maintaining impartiality
- f. Ethical issues, including those relating to multiple parties
- g. Standards recommended by national associations
- h. Liability
- i. Role of mediators as officers of the court
- j. Addressing cultural differences between the parties
- k. Malpractice concerns
- l. Disciplinary procedures

B. The following topics shall be taught by the primary trainer, or an attorney who otherwise meets the criteria of II(C)(2).

1. Lawyers and Mediation (minimum 3 hours)

- a. Role of litigants' lawyers in mediation process
- b. Attorney/client relationships
- c. Establishing credibility with lawyers
- d. Attorney fees issues
- e. Dealing with legal issues
- f. Private sessions with lawyers
- g. Malpractice concerns
- h. Discovery issues
- i. Difference between court ordered and voluntary mediation
- j. Local mediation procedures and forms
- k. Trial court rules and procedures

- 1. Referral criteria - e.g. to accountants, appraisers, etc.
- 2. Dynamics of Mediation (minimum 3 hours)

- a. Dealing with institutional litigants
- b. Complexity of litigation
- c. Third party interests

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- d. Dealing with insurance
- e. Carrier assessments/roles
- f. Context/environment in which the case is proceeding to mediation

C. Interpersonal Dynamics in Communications (C1 and C2 may be taught in the same unit, and jointly must account for a minimum of 2 hours of the course):

1. Relationship Skills and Knowledge (Must be taught by an expert)

- a. Common issues surrounding relationship of litigants
- b. Forming relationships and building rapport
- c. Use of outside experts
- d. Establishing trust
- e. Setting a cooperative tone
- f. Establishing neutrality and impartiality
- g. Empathetic listening and questioning
- h. Empowering parties
- i. Using self as a barometer for understanding party reactions
- j. Staying non-judgmental
- k. Psychologically dysfunctional disputants

2. Communication Skills and Knowledge. (Must be taught by an expert)

- a. Listening
- b. Responding
- c. Guiding
- d. Paraphrasing
- e. Confronting
- f. Reframing
- g. Attending to non-verbal communication
- h. Identifying areas of consensus and disagreement
- i. Questioning
- j. Clarifying
- k. Using clear, neutral language
- l. Balancing communication
- m. Modeling constructive behavior

D. The remaining hours shall be devoted to.

1. Introduction to Conflict Resolution Theory.

- a. Conciliation, mediation, arbitration-definitions and distinctions

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- b. Negotiation theory
- c. The effect of mediation at various stages of litigation, including pre-suit
- d. Mediation process
- e. Review of mediation effectiveness

2. Information Gathering Skills and Knowledge. This area must include a structured role play. The exercise must highlight:

- a. Questioning
- b. Setting the agenda and prioritizing areas
- c. Identifying issues
- d. Screening issues
- e. Exploring parties' background interests and concerns

3. Problem-Solving Skills and Knowledge. This area must include a structured role play. This exercise must highlight:

- a. Identifying and analyzing problems and needs
- b. Collecting data
- c. Prioritizing issues
- d. Framing issues
- e. Narrowing issues
- f. Converting positions into needs and interests
- g. Educating parties
- h. Identifying areas of agreement
- i. Identifying principles and criteria to assist decision-making
- j. Designing temporary plans
- k. Developing options and brainstorming
- l. Evaluating options and consequences
- m. Testing reality
- n. Developing an implementation plan
- o. Assisting parties to identify alternatives to a mediated agreements.

4. Ethical Decision-Making and Values Skills and Knowledge

- a. Understanding mediation standards of ethical practice
- b. Being sensitive to parties' values, including culture
- c. Being non-judgmental
- d. Establishing a commitment to honest disclosure
- e. Maintaining dignified behavior
- f. Being respectful of the parties

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- g. Not imposing personal and professional values
- h. Establishing and maintaining a right to self-determination by the parties
- i. Honoring the uniqueness of parties
- j. Ensuring individual responsibility of parties for themselves
- k. Establishing the importance of each individual's participation
- l. Ensuring voluntary agreements and participation
- m. Recognizing responsibilities to non-present parties
- n. Dealing with commonly encountered ethical dilemmas

5. Interaction and Conflict Management Skills and Knowledge (this area must include a structured role play)

- a. Using ground rules
- b. Reducing tensions
- c. Balancing power
- d. Refocusing
- e. Confronting
- f. Strategizing/orchestrating
- g. Caucusing
- h. Managing impasse
- i. Empowering parties
- j. Distracting/redirecting
- k. Dealing with strong emotions
- l. Maintaining control of the process
- m. Managing the influence of outside parties

6. Professional Skills and Knowledge

- a. Case management
- b. Community and legal resources
- c. Drafting memoranda and agreements
- d. Effective use of outside experts
- e. Obtaining, recording and monitoring factual information
- f. Dealing with complex factual materials
- g. When and how to refer issues to other forms of alternative dispute resolution

VI. RECERTIFICATION

Any mediation training program, certified by the Indiana Commission for Continuing Legal Education as meeting these standards, is certified for a period of 5

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years from the date of approval. However, the trainer must submit a listing of scheduled courses at least 45 days before each course, giving the date, time and place of the course. Any material change in the course (such as a change in a primary trainer, expert or the curriculum) requires a new application to the Commission.

VII. DECERTIFICATION

The Commission has the right to audit certified programs. Such an audit may include, but is not limited to: attendance of any part of the course; examination of evaluation forms; examination of curriculum and written materials; and, interviewing participants. Programs which are determined to no longer comply with these standards will be decertified.